

**Town of East Windsor
Conservation Commission/
Inland Wetland Watercourse Agency
Town Hall, 11 Rye Street, P.O. Box 389, Broad Brook, CT 06016
Tel: (860) 623-2302 Fax: (860) 623-4798**

**MINUTES OF REGULAR MEETING
August 3, 2005**

I. CALL TO ORDER - 7:30 p.m.

Ms. Kehoe, Vice Chairman, called the meeting to order at 7:30 p.m. at the East Windsor Town Hall, Rye Street in Broad Brook.

II. ESTABLISHMENT OF QUORUM

Present: Linda Kehoe, Vice Chairman, Michael Ceppetelli, John Sawka, Rene Thibodeau, Richard Osborn and Janice Warren

Unable to Attend: John Maslak, Chairman, Michael Koczera, John Malin

Also Present: Nancy Rudek, Zoning Enforcement Officer

III. APPROVAL OF MINUTES – (07/6/05)

**MOTION: To approve the regular meeting minutes of July 6, 2005 as submitted
Made by Mr. Osborn, seconded by Mr. Thibodeau
ALL MEMBERS IN FAVOR. MOTION CARRIED.**

IV. AGENDA ADDITIONS – None.

**MOTION: To go out of agenda order to address all Receipt of Applications and then
return to agenda order.
Made by Mr. Osborn, seconded by Mr. Ceppetelli
ALL MEMBERS IN FAVOR. MOTION CARRIED.**

RECEIPT OF APPLICATIONS

*** Amendment/Extension of Existing Permit**

A. Wapping Road (west side) – NORCAP – Application of Botticello, Inc., to modify existing permit # 1295 to construct a berm/swale to create a detention/sedimentation basin. Original permit issued August 2, 2000 to Dennis Botticello.

Denise Lord, Licensed Engineer with Anchor Engineering Services, came before the Commission and presented updated plans incorporating the Town Engineer's comments. The

discussion was regarding Phase III, extending the permitting and seeking approval of minor modifications. This request has nothing to do with the gravel excavation, it is to install a berm so the area can act as a detention area, a sedimentation basin. This is an improvement in storm water management. The previous approval was for the gravel excavation, which remains the same and they are requesting an extension. Ms. Rudek did a site visit and noted it was self contained. No concerns were expressed by Ms. Rudek. A lot of work has been done and a temporary berm is there. S&E controls and the current operation were discussed. The Applicant was asking for as long an extension as the Commission could give.

MOTION: To approve the modification to Permit #1295 as presented and grant an extension of the existing permit for one (1) year.

Made by Mr. Osborn, seconded by Mr. Ceppetelli.

ALL MEMBERS IN FAVOR. MOTION CARRIED.

* Jurisdictional Ruling (determination of permit needed)

- A. 4 Craftsman Road – Application of Sleepy’s Mattress Company for a ruling of No Jurisdiction for the construction of 2 building additions, with a total footprint area of 1,482 ± s.f. Total parcel is 10 acres, served by public water and sewer.

Ms. Rudek presented the plans, discussed the previous application and outlined the wetlands that no longer exist. The Town Engineer’s comments were provided and discussed. The Commissioners felt this would be an amendment to the existing permit as work is still being done.

MOTION: To grant an amendment to Permit #1345 (issued on 10/6/04) to encompass construction of two buildings as presented, and maintain the Commission’s former ruling.

Made by Mr. Ceppetelli, seconded by Mr. Osborn.

ALL MEMBERS IN FAVOR. MOTION CARRIED.

* Inland Wetland Permit to Conduct Regulated Uses

- A. 9 Sharon Lane – Application of Shawn & Nicole Keel to conduct regulated activities associated with a 18 X 36 In-Ground Pool. Total parcel is 1.12 acres, served by private well and public sewer.

Nicole Keel and Roger _____ came before the Commission to discuss this application and the S&E controls during construction. The location of the stockpile needs to be put on the plans. The wetland planting on the property line was explained to the owner. The owner needs to outline how drainage of the pool at end of season is going to be accomplished.

MOTION: To accept receipt of the application for 9 Sharon Lane and the \$55 fee.

Made by Mr. Osborn, seconded by Ms. Warren

ALL MEMBERS IN FAVOR. MOTION CARRIED.

B. 9 North Road – Application of John Silva to conduct regulated activities associated with the construction of a 2,080 s.f. building and parking lot. Total parcel is 0.93 acres, served by public water and sewer.

The street address for this application is **17 North Road**. The location of this site is between the trailer park and The Connecticut Water Company. The Applicant will make a presentation at the next meeting.

MOTION: To accept receipt of the application for 17 North Road.
Made by Mr. Osborn, seconded by Mr. Thibodeau
ALL MEMBERS IN FAVOR. MOTION CARRIED

MOTION: To return to regular agenda order
Made by Mr. Osborn, seconded by Mr. Ceppetelli
ALL MEMBERS IN FAVOR. MOTION CARRIED.

V. PUBLIC HEARINGS (on Inland Wetland applications)

A. **247 Rye Street (Farnham Estates)** – Continued public hearing on the application of KF Realty LLC to conduct regulated activities associated with an 8 lot planned residential development. Total parcel is 16.88 acres, served by public water and septic system. Total wetland disturbance is 0.002 acres. (Granted 30-day extension for deadline to close hearing, to 8/12/05)

MOTION: To reopen the public hearing at 8:00 p.m.
Made by Mr. Osborn, seconded by Ms. Warren
ALL MEMBERS IN FAVOR. MOTION CARRIED.

Ms. Kehoe outlined that the Applicant could start the hearings with a Rebuttal, then comments would be accepted from the Intervener and then the Public would be invited to comment.

Present for Applicant: Walter Kebalo, K F Realty; Gaelen Semprebon, Design Professionals and Edward Pawlak, CT Ecosystem, LLC

Present for the Intervening Filer: Attorney Amy Blaymore Patterson, Sigrun Gadwa of REMA Ecological Services and John W. Thompson

List of Exhibits and/or Documents filed or entered into the Record for The Farnham Estates for Public Hearings: May 4, 2005; June 1, 2005; July 6, 2005; August 3, 2005.

All Exhibits are located in the file for this Application in the Planning and Development office and not attached to these minutes.

Exhibit A - Review Letter from David Askew, North Central Conservation District, Inc.,

dated May 31, 2005

Exhibit B - Letter from North Central Health District to Town Planner, East Windsor, CT, dated July 5, 2005

Exhibit C - Memorandum from Nancy J. Rudek to E.W. Inland Wetland Commission Members re: Filing of Intervention, dated June 30, 2005 (*attachments included: Petition for Intervention pleading, dated June 29, 2005, Section 22a-19 of CGS*)

Exhibit D - Preliminary Application Review for 247 Rye Street-Farnham Estates, submitted by Intervener's Environmentalist, dated July 6, 2005

Exhibit E - Comments and notes prepared by Marshall E. Lamenza, dated July 6, 2005

- 1) Court Cases (pages 1 thru 22) submitted by Applicant's attorney, Hal Cummings, at 7-6-05 meeting
- 2) Letter from Becky Meyer, Design Professionals to Nancy Rudek, re: removal of proposed walking trail, dated June 29, 2005
- 3) Letter from Becky Meyer, Design Professionals to Nancy Rudek, re: response to comments from North Central Conservation District, dated June 28, 2005.
- 4) U.S.G.S. Map indicating drainage flow, submitted by Design Professionals at 7-6-05 meeting.
- 5) Letter, dated June 21, 2005, from Becky Meyer, Design Professionals to North Central Health District, re: comments and revised plans to NCHD comments of 5-31-05.
- 6) Letter, dated May 31, 2005, from North Central Health district, to Rebecca Meyer of Design Professionals.
- 7) Review comments from Town Engineer Leonard Norton to Nancy Rudek, dated May 23, 2005.
- 8) Letter from Galen Semprebon, Design Professionals to Nancy Rudek, dated May 18, 2005 – re: responses to Town Engineer's comments of 4-26-05
- 9) Review comments from Town Engineer Leonard Norton to Nancy Rudek, dated May 5, 2005.
- 10) Letter from John & Madeleine Thompson, 259 Rye St. to Inland Wetland Agency, dated April 27, 2005

- 11) Review comments from Town Engineer Leonard Norton to Nancy Rudek, dated April 25, 2005
- 12) Letter from John P. Ianni, Highland Soils LLC to Becky Meyer, dated April 11, 2005
- 13) Stormwater Management Plan, Farnham Estates, prepared by Design Professionals, Inc., dated April 4, 2005

Documents Entered into the Record at the public hearing of August 3, 2005

- Exhibit 3A Faxed comments (grading revisions to Lot 6) from Galen Semprebon of Design Professionals to Nancy J. Rudek, dated August 2, 2005
- Exhibit 3B Report by Dr. Clarence Welti, P.E., P.C.,— re: impact of construction at escarpment topography, dated July 27, 2005
- Exhibit 3C Report by Edward M. Pawlak, Registered Soil Scientist with Connecticut Ecosystems LLC – re: functions and values of Ketch Brook/impacts, etc., dated August 3, 2005
- Exhibit 3D 2004 CT Stormwater Quality Manual (Pages 1-2, 6-2, 11-2)
- Exhibit 3E Third Edition, “Water Supply and Pollution Control”, by John W. Clark/Warren Viessman, Jr., Mark J. Hammer (Pages 277, 278, 279)
- Exhibit 3F “Environmental Engineering and Sanitation” – Third Edition, by Joseph A. Salvato (Page 385)
- Exhibit 3G Report of CT DEP Water Compliance Unit, “Seepage and Pollutant Renovation Analysis for Land Treatment, Sewage Disposal Systems”, dated 1982 by Kent A. Healy, Professor of Civil Engineering, Uconn-Storrs, CT & Randy May, Principal Sanitary Engineer, CT DEP.
- Exhibit 3H Report by Design Professionals, Inc., “Nitrogen Removal Calculations”, - undated, received/distributed at 8-3-05 meeting.
- Exhibit 3I Petition/ 56 Signatures opposed to development of Farnham Estates, 247 Rye St.
- Exhibit 3J Letter by Barbara A. Smiegiel of 215/219 Melrose Road to East Windsor Inland Wetlands Commission, dated August 1, 2005
- Exhibit 3K Professional Resume of George T. Logan, M.S. /Principal Environmental Scientist
- Exhibit 3L Professional Resume of Sigrun N. Gadwa, M.S. /Senior Ecologist
- Exhibit 3M Memo to East Windsor Inland Wetlands Agency from Sigrun N. Gadwa, M.S., Re: Review of Plans for Farnham Estates (6/29/05 revision), dated August 3, 2005

- Exhibit 3N Memorandum to East Windsor Inland Wetlands Commission from Attorney Amy Blaymore Paterson & Sigrun N. Gadwa, Re: Application for 247 Rye Street (Farnham Estates), dated August 3, 2005
- Exhibit 3Q CT Dept. of Environmental Protection/Natural Diversity Database, Special Animal Survey Form – reporting of personal field sighting (wood turtle), observed by John W. Thompson in May/June 2003.
- Exhibit 3P Resume of John W. Thompson, 259 Rye Street.
- Exhibit 3Q Terrace Escarpment Slopes-Homeowner Information Sheet and photos of slope failure, south side of Ketch Brook on wooded slope ½ mile east of proposed Farnham Estates.
- Exhibit 3R Letter from John W. Thompson to Attorney Amy Paterson, re: Questions for Public Hearing, dated July 30, 2005.
- Exhibit 3S Report by Soil Scientist John P. Ianni to Becky Meyer of Design Professionals, dated April 11, 2005.
- Exhibit 3T Letter from Attorney Harold R. Cummings to East Windsor Conservation Commission/Inland Wetlands Agency, re: 247 Rye Street, dated August 3, 2005

NOTE RE: EXHIBITS MARKED AT TONIGHT’S HEARING: The Exhibits received at the hearing were marked verbally to confirm the record. Representatives for the Applicant and the Intervener were advised that the items marked as exhibits were for the official file in the Planning and Development offices. If copies were not made in advance, and distributed to Commission members individually at this meeting, by the Applicant and/or the Intervener, the Commissioner would not have his/her own copy. It was stated out loud, with specificity, which Exhibits had been provided for the record, as well as a copy for the Commissioners individually. If either party intends to forward individual copies of their Exhibits to Commissioners directly, as copies were not provided at the hearing, the party is not to send anything additional, only the Exhibits marked before the close of the public hearing.

Walter Kebalo of KF Realty LLC, introduced himself and his business partner, Andy Kebalo, to the Commission and spoke regarding this pending application. These plans were drafted taking into consideration the topography of the land and the unique characteristics of Ketchbrook. There is a 200/300 foot natural buffer between Ketchbrook and the proposed homes. Great care was taken with the design and the landscaped water quality basin is guaranteed to treat and clean. Neighborhood concerns as to wetlands and watercourse have been taken into consideration and, as such, the Applicant hired Dr. Clarence Welti to report on the Terrace Escarpment (hereinafter “TE”) slope concerns and sediment and erosion (hereinafter “S&E”) controls. Boring tests of the relevant slopes are stable. Dr. Welti’s report was submitted as an exhibit. (Exhibit 3B) Mr. Kebalo also stated Edward Pawlak of CT Ecosystem LLC would be addressing the Commission to address pollution concerns. Mr. Kebalo reserved the right to address the Commission at the end of the hearing by reading a written statement from Attorney Cummings, permission was granted. Later in the meeting, just before the close of the hearing, Mr. Kebalo submitted Mr.

Cummings letter dated August 3, 2005 as an exhibit for the record, but time did not permit him to read the statement out loud.

Ed Pawlak of CT Ecosystem, LLC introduced himself to the Commission and provided his education and work experience as a registered soil scientist and wetland scientist. He submitted his report and this was marked as Exhibit 3C. He stated he will not be discussing sediment and erosion control issues and cannot offer any opinions in that regard. He referred the Commission to Dr. Welti's report and Design Professional information for S&E issues.

Mr. Pawlak took the Commission through his report (Ex. 3C) completely and addressed all of his findings for the Commission, and the discrepancies found in the REMA report. He testified to what he observed on his walk through the site and defined a "kick sample" technique for the Commission. He commented that land use in a watershed is likely to contribute to high nutrient value of Ketchbrook and the land use in the watershed was outlined on a colored map. Mr. Pawlak stated the Red Headed woodpecker is a rare breed of bird and it is not logged as breeding at or near this site. The American Kestrel does not typically reside in this area.

The Applicant agreed to a conservation easement of the whole wetland system and 150' upland review area. The only activity will be the construction and the maintenance of the basin.

Gaelen Semprebon of Design Professionals came before the Commission to discuss this application and the revised plans. He outlined the revisions, to include, a change in the house construction sequence with a limit in construction of lots 5 and 6 post-road construction; grading was revised to the retaining wall on lot 6 (now 2 to 5 to 1). He recapped the approval of North Central Health, the comments from the Town Engineer and the Conservation District, all of which were addressed by the Applicant, as well as compliance with State requirements. Several publications were distributed and marked as Exhibits to provide the Commission the background behind these State suggested requirements.

Mr. Semprebon acknowledged the alarm that is felt when TE slopes are mentioned and the history of wash outs in East Windsor and various locations. He detailed his experience in failures in old subdivisions where water discharged at the top of a slope and erosion caused with storm pipe issues. This is not a case of TE slopes and these are workable grades which do not have this type of issue.

Mr. Semprebon discussed the septic systems and again passed out reference materials that were marked as exhibits. The DEP methodology goes to large communities. He outlined the distance of the systems and that the phosphates are absorbed in the strata prior to any potential entrance into water. He also provided the (undated) Nitrogen removal calculations by Design Professional, submitted as Exhibit 3H. He detailed the background, analysis, calculations and conclusions.

Recess 8:55 p.m. – 9:05 p.m.

Attorney Amy Blaymore Patterson re-introduced herself as the attorney for the Intervening Filer, John W. Thompson and Madeleine P. Thompson, as well as a coalition of 11 households called "Friends of Ketchbrook", who oppose the project and express concerns with this project and its proximity to Ketchbrook. As a housekeeping measure she inquired if the members who missed the previous meeting are up to date with information distributed at that time. Attorney Patterson submitted Exhibits for the record, including a letter from Barbara Smiegel (Ex. 3J), who was unable to attend tonight's hearing, as well as a Petition in Opposition to Farnham Estates (Ex. 3I). Ms. Patterson introduced Sigrun Gadwa and John Thompson who would be speaking tonight on their review of the reports by Mr. Pawlak and Dr. Welti.

Attorney Patterson said per section 7.8 an incomplete application can be denied. She submitted as an exhibit her rebuttal to Attorney Cummings legal interpretation of cases cited at the previous meeting (Ex. 3N).

The resumes of George Logan and Sigrun Gadwa were submitted as an exhibits (Ex. 3K and Ex. 3L). At this point Attorney Patterson and Ms. Gadwa enacted lengthy question and answer session as set forth in Exhibits 3N and 3M for the Commission and the public present. Attorney Patterson outlined that these questions were drafted because the ZEO had previously advised the Commission of the Intervener's burden to give evidence to support allegations in its Petition, providing expert information to the Commission to support these allegations.

Ms. Patterson inquired who would monitor maintenance of the basin and how long the basin would be effective. The Applicant states it is the responsibility of the Homeowner Association, but who will enforce that. It is Attorney Patterson's experience as an attorney that after the fact enforcement proceedings are not effective as they are a hindsight measure. She submits that the risk is too high.

Also discussed was the relevant sections and case law citing the fact that the Applicant has to review feasible and prudent alternative plans as necessary to balance the achievement between economic development and the natural habitat. The Applicant has not met that burden as there has been no discussion of a decrease in the number of lots, no alternate proposal for less disturbance, nor has it decreased the scope of the project. The alternative solutions may not be economically sound for the Applicant, but that is not the Intervener's concern.

Mr. Thompson's resume was set forth as an exhibit (Ex. 3P) and he joined the discussion and addressed the Commission. Mr. Thompson relayed his siting and documentation of a wood turtle and the report of it in May, 2003. This proposed regulated activity will cause physical impacts to the watercourse and wetlands and have an adverse impact.

Mr. Thompson commented on Dr. Welti's report, which he received late in the afternoon the day of the public hearing. Mr. Thompson stated he has retained Dr. Welti in the past and knows that Dr. Welti is reputable, wonderful and smart, but he also knows his reports are vague, difficult to understand and hard to draw conclusions from.

He outlined references in the boring reports that say “trace silt”, “some silt” and “little silt” and questioned how these amounts are defined and determine. He also questioned the different depths of the borings, some more shallow than others.

Mr. Thompson referred to discussions with David Askew, as well as Mr. Askew’s May 31, 2005 letter (former Exhibit at previous hearing). If Mr. Askew had seen Dr. Welts’ report and Sheet 12/12, would he [Askew] have given the same report? Mr. Thompson talked to Mr. Askew about the soils and that they will fail given the right condition. Dr. Welts’ report is devoid of any specific examples of successful development on these type of slopes. Mr. Thompson stated Dr. Welts’ report was hypothetical and provided no specifics.

Similar to what was done earlier in the evening with Ms. Gadwa’s testimony, Attorney Patterson and Mr. Thompson provided Mr. Thompson’s opinions by way of a Question and Answer dialogue, as outlined specifically in Exhibit 3R.

Mr. Thompson had several blown up photos of the slope failures he has referenced in his testimony and went into great detail on this evidence of slope failure. He asked that the Commission keep these pictures in mind, in conjunction with the DEP and Town of East Windsor hand outs regarding the dangers of TE slopes. He said despite all of the testimony provided, the photos presented cannot dispute the evidence of mass TE slope failure which would result in property loss, public safety issues and a negative environmental impact. In light of what has been presented to the Commission he trusts the Commission will reject the proposal in its entirety.

Attorney Patterson concluded with the following points: Section 9.2 E of the regulations is regarding public safety concerns. All three Intervener experts stated development on TE slopes creates unreasonable risk of slope failure which will effect safety and welfare. A much higher degree of scrutiny is necessary for TE slopes, Enfield has incorporated TE slopes as regulated area. Remediation in the event of slope failure is done at a high cost. Damage to a home is costly and Attorney Patterson exemplified an instance in Enfield the Town had to pay for remediation through a court proceeding. Attorney Patterson stated the Commission has the discretion to decide this issue and the Intervener has more than met the burden of proof. It has shown the application is deficient, there is a reasonable likelihood for unreasonable pollution, there is a reasonable likelihood to cause adverse impact on the environment, the Applicant failed to provide a prudent feasible alternative, by reducing the scope of the project, including removal of the water quality basin or an alternative plan to remove development from the steep slopes. She concluded that legal and expert testimony aside, logic and common sense shows this plan is for the wrong site, wrong for the wetland and wrong for the safety of the town residents. Attorney Patterson concluded by requesting the Commission deny the application.

Jim Pastula, 241 Rye Street

His property abuts the property and he opposes the project. He stated he feeds Red Headed Woodpeckers every day in his feeder and welcomes anyone to come and see them, he had to get a special feeder because they eat shelled peanuts.

Nancy Masters, 312 Rye Street

She questioned the type of woodpecker Mr. Pastula fed. She stated her property just about abuts the Applicants property, she can walk there. It is the best kept secret, it is pristine land with a meandering stream that bubbles under a canopy of trees, like something out of a poem, which will possibly be destroyed due to construction. The Hunting/Fishing club maintains it and this project will effect the best kept secret. This water funnels into the Scantic and it cannot be destroyed. She also mentioned seeing a skink (phonetic) – a tiny newt that is black with bright yellow spots, spotted under dead trees.

Chuck Matteson, 52 Omeila Road

He questioned why the borings were stopped at certain depth, is there something below that could be found that the Applicant does not want disclosed? There are voids, filled with water, when the water leeches out due to construction and creates a large empty void, who is to say what can happen and who will be effected? If the houses slide down the slopes, where will the ruptured oil tanks go? That would have an impact. The phosphates from washing machines and septic systems filter out, but impossible not to filter to Ketchbrook.

RECESS 10:55 p.m. – 11:00 p.m.

Ms. Kehoe outlined that the Commission would ask questions and then the Applicant will do its rebuttal.

The Applicant was asked what seeding mixes are used and where used, as well as where the detention stock piles will be. Mr. Semprebon stated the seeding mixtures are stated on the landscape plan, three basic ones for the lawn area and two other for the basin, a wetland mixture in the bottom of the basin and a low maintenance mixture at the side of the basin. The stockpile recommended location based on development will be on each lot, there is some flexibility with location, but they cannot go near the septic. He suggested if an alternate location is recommended that can be done. All stockpiles are surrounded by silt fence on the erosion control plan. Minor stockpiles will be utilized as topsoil berms to control discharge water during construction.

The Intervener was asked if there is a fair amount of lawn space is there more detail risk to wildlife stream activity from pesticides due to weeds. Ms. Gadwa stated concentration of pesticides vary and the increase of concentration may not effect pollution, but it can change a species. In her opinion a majority of pesticide concentrations are below toxic, but there is a possibility also concentration in seepage can have an effect. There can also be problems from roadway run off which has pesticides in it. Some have 60 day half life, some break down, some do not and that could have an effect with accumulation in a storm water management basin.

It was stated that the Ketchbrook Restoration project was finished between ten and eleven years ago, it was started in 1989 and completed in 1993.

The Applicant was asked if this will this be a storm water management basin or a water quality basin? It was stated this is a water quality basin, it is not a detention basin. The Applicant was

asked where is water quality in proximity to the grade at the basin? Water level is below the basin. The Applicant was asked, when all the sand and salt is in the drains to the basin, what will happen to the water level in the basin? The basin will typically be cleaned out every 5 to 10 years, pulling roughly ½ ton of material at that time. The Homeowner Association will have a contract to cover management of the basin. There is no guarantee it will be done in a timely fashion, and it is not a perfect situation. It was also outlined East Hartford has regulations for Associations with basin management. Commission member Mr. Sawka refuted that the amount of sand they are calculating is off, as he lives on Rye Street and he can guarantee they would have to clean that basin out once year due to road sand. Mr. Semprebon disagreed.

It was stated that Lot #7 has drainage from the house drain to slopes and out in the middle of the slope. Mr. Semprebon responded per building code a footing drain needs to be installed and they do not expect water to come out of that pipe, but they need to conform with code. He stated they could bring out in an opposite place. Ms. Kehoe stated that anything that comes out on a slope needs to be addressed.

Concerns were expressed about the temporary stock piles which should have a silt fence, hay bales and seeding blanket and should be placed away from the slopes. Mr. Semprebon stated the top soil piles soak up moisture and are not highly erodible.

It was stated the perk rate at #8 was 0-5 minutes per inch, a fast rate, a fast rate bigger system? Mr. Semprebon stated 0-5 is the ideal rate based on health code.

For materials in “a suitable location”, not on a slope, not on a wetland – this needs to be specified.

Inconsistencies were noted between the tree warden and the landscape architect.

For the gravel drive, “filter fabric if required.” Where and why? Mr. Semprebon stated they need a drive to access the basin at the end of the road, and it has to be stable. Filter fabric will probably not be needed, it was put in should there be type of soils present, but it is not needed here.

It was mentioned it would be nice to see a bigger conservation easement including the slopes.

It was also noted that Rhodendrons are on the plan. It was highly encouraged that anything brought into this site be locally grown as the Applicant would not want to bring a West Coast species in with a possible virus – locally grown materials are preferred.

Who determined the test boring depths that Dr. Welti did? Why are the depths varied? Mr. Semprebon stated Dr. Welti used the science of boring to make his conclusions and he makes those conclusions based on a code of ethics. As to why the different depths, that is what he felt due to the limit of construction. Dr. Welti determines the locations and the borings. Mr. Semprebon further stated if the test boring came back unfavorably he [Semprebon] would be obligated to design the plan accordingly and no one can lie for him.

The Commission asked Mr. Semprebon what his thoughts were on the slope failure, as pictured and testified to by Mr. Thompson. Mr. Semprebon stated that there is not a "steep slope you can walk up" on the site in question. It was also stated by the Intervener that there was no man made impact on that collapse, but Mr. Semprebon pointed out there is a corn field above that site, which has more run off than a residential development. He further detailed the previous repair to Ketchbrook Watershed as a result of run off from a large field. This application is a different situation where the run off is controlled in relation to the slopes.

Randy Moore, 247 Rye Street

He refuted the statement that where the houses are being put there are no such slopes [as portrayed in Mr. Thompson's pictures]. He invited anyone to the back of his house to walk to the brook and then be able to determine there is no such slope.

Mr. Semprebon was questioned as to the grade to the basin, 27" and it was stated that a four wheel drive loader would find that hard to do. Mr. Semprebon felt a back hoe could get in there.

Ms. Kehoe stated that inspection of the basin should take place more than twice a year.

Eaves from the roof should have splash pad controls in place as the amount of erosion is significant.

It was stated that there are projects in Connecticut on slopes as steep as those in the application and they are not considered TE slopes.

Andy Kebelo of K F Realty stated he will be on site every day. They are builders who do a fair amount of excavation and they will address any issues and the Commission can rest assured any necessary adjustments will be done. Also, as to the stock piles, double silt fence and hay bales can be done.

Attorney Patterson had a brief view to offer → She questioned where all the data for the above referenced details on the water quality basin grading are, or was boring data done at the bottom of the basin. Also where will the dredged material from the basin go, where is a suitable location?

Mr. Thompson added that the slope that failed as presented in the pictures, originally was similar to ones which can be found currently on the site in question.

Gaelen Semprebon, on behalf of the Applicant gave a rebuttal to testimony given this evening. He stated he could not interpret the legal aspect. Without intending to attack the Intervener experts, he asked the Commission to look at their lack of credentials. He stated the Interveners are using scare tactics, i.e., slopes fail-people die, to make their point. It is his professional opinion that this is not the case, this design is a stable project. He noted that one expert has a personal involvement in the opposition of this project and that expert is not a registered

professional engineer, so he is not qualified to give expert testimony. When referencing the failure of the slope in the pictures, Mr. Thompson did not acknowledge that a corn field was a man made disturbance. That failure is ½ mile from the site, and there is no documentation of a failure on the site. The data does not parallel both slopes. B5 is the detention basin boring. He further stated the remaining experts were not qualified to make the testimony that was given.

He further stated if the silt layer is 8-16 feet deep, it is not significant if the Applicant is not digging there. The attack on Dr. Welti's reputation and that his reports are vague was incorrect. Dr. Welti is the "geotechnical father around here." Everyone uses him because he is good. "some trace" and "little trace" are accepted terms which are defined in the boring logs.

Money has been spent on Ketchbrook because of significant erosion problems, and it was money well spent. Mr. Semprebon personally witnessed some of the problems and has presented solutions on how to protect the environment and support farm operations.

As to the feasible and prudent alternative, the Applicant has to look at the impact on the wetland and provide an alternative to minimize the impact. They have come up with a plan, and that is the one presented. Mr. Semprebon stated the argument that no development is optimal can always be used, but it is not realistic. There will be 8 houses, including the existing house, on 16.8 acres. There are large areas in their natural condition which will serve as a buffer between the brook and the neighborhood. Even if the development is scaled back, some form of water quality basin will be required. It is not practical to use swales, there needs to be a discharge and the prudent alternative is the basin, so there is no overflow over the slope.

The basin provides an alternative to the environmental condition, different habitat but not blockage for the natural corridor. The Home Owner Association is the best way to have the least impact on the Town for maintenance of the basin, and it makes sense, as the Town budget has been strapped and it is burdensome for public works to take on basin maintenance. The basin works hydraulically, while Mr. Semprebon is not qualified to discuss hydraulics, this is the latest recommended practice. Design Professionals and the Town Engineer have looked at the plan.

Mr. Semprebon referred to the testimony and exhibits from the Town Engineer, Dr. Welti and Design Professionals. The Conservation District responded as well. The professional code of ethics must be met, therefore the truth must be stated. Mr. Semprebon believed the Commission had been misled.

Mr. Pawlak responded as follows:

- Ms. Gadwa of REMA is on the record for a measurement of 3.4 mg/liter to confirm that is not low nutrient;
- 7" water is an oxbow wetland on July 15 and four days later there was no surface water. It infiltrated into the ground in the sandy soil, water oxbow is rapid. So it was speculation that the oxbow was a vernal pool because there was 7" of water and a wood frog was seen. The April 11, John Ianni letter submitted outlines there is no vernal pool.
- It was surprising the wood turtle report did not show up in a 2005 query to the DEP and he was surprised the DEP did not reply regarding the wood turtle.

- There has been mischaracterizations by the Intervening party and it is irresponsible to speculate on impact based on an unknown, it is not proper;
- It is his opinion the proposal will not result in a significant impact.

Mr. Kebalo submitted Attorney Cummings letter dated August 3, 2005 as an exhibit before the hearing closed.

MOTION: To close the public hearing at 11:57 p.m.
Made by Mr. Ceppetelli, seconded by Mr. Thibodeau
ALL MEMBERS IN FAVOR. MOTION CARRIED.

MOTION: To table this application to the September meeting.
Made by Mr. Ceppetelli, seconded by Mr. Osborn.
ALL MEMBERS IN FAVOR. MOTION CARRIED.

VI. CONTINUED APPLICATIONS OR BUSINESS - None

VII. RECEIPT OF APPLICATIONS – Address out of order – see above.

VIII. MISCELLANEOUS - None

IX. AGENT DECISIONS - None

X. VIOLATIONS (for action or show-cause hearing) - None

XI. STATUS REPORTS

A. Wells Road (west side) and North Road (south side) – Richard A. Montgomery

Not discussed.

XII. BUDGET – None.

XIII. ADJOURNMENT

MOTION: To adjourn at 11:59 p.m.
Made by Mr. Osborn, seconded by Mr. Ceppetelli
ALL MEMBERS IN FAVOR. MOTION CARRIED.

Respectfully submitted

Cynthia D. Croxford
Recording Secretary